United Nations A/C.6/60/SR.1

General Assembly
Sixtieth session

Official Records

Distr.: General
28 October 2005

Original: English

Sixth Committee

Summary record of the 1st meeting
Held at Headquarters, New York, on Monday, 3 October 2005, at 3 p.m.

Chairman: Mr. Yáñez-Barnuevo ..... (Spain)

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05-53297 (E)

The meeting was called to order at 3.10 p.m.

Tribute to the victims of terrorism

1. *At the invitation of the Chairman, the members of the Committee observed a minute of silence in memory of the victims of the terrorist bombing on Bali on 1 October 2005 and of other terrorist attacks which had occurred since the previous meeting.*

Election of the Rapporteur

2. **The Chairman** said that the Group of Latin American and Caribbean States had nominated Ms. Shermain Jeremy (Antigua and Barbuda) in the office of Rapporteur. In the absence of any other nominations, he took it that the Committee wished to elect Ms. Shermain Jeremy as Rapporteur.

3. *It was so decided.*

Organization of work (A/C.6/60/L.1 and A/C.6/60/L.1/Corr.1)

4. **The Chairman** noted that in a global and interdependent world, international law was playing an important role in all aspects of relations among nations, a fact reflected in the 2005 World Summit Outcome (A/RES/60/1). The Committee must therefore spare no effort in responding to the Secretary-General's invitation to meet new challenges and to strengthen the rule of law in international relations. In particular, it should make every effort to conclude a comprehensive convention on international terrorism during the current session.

5. He drew attention to the allocation of agenda items to the Committee as contained in document A/C.6/60/1 and to the note by the Secretariat on organization of work (A/C.6/60/L.1 and Corr.1).

6. With regard to the establishment of working groups, he recalled that the General Assembly, in its resolution 59/47, had decided that the work of the Ad Hoc Committee established pursuant to General Assembly resolution 56/89 should continue during the sixtieth session of the General Assembly within the framework of a working group of the Sixth Committee. The Ad Hoc Committee had been mandated to expand the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel, including, inter alia, by means of a legal instrument. He therefore took it that the Committee wished to establish a working group of the Sixth Committee, chaired by Mr. Wenaweser (Liechtenstein), in order to continue the work of the Ad Hoc Committee and that the working group, like the Ad Hoc Committee, would be open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency.

7. *It was so decided.*

8. **The Chairman** referring to agenda item 108 (Measures to eliminate international terrorism) drew attention to the fact that the General Assembly, in its resolution 59/46, had decided that the work of the Ad Hoc Committee established pursuant to its resolution 51/210 should also continue during the sixtieth session within the framework of a working group of the Sixth Committee. He announced that the International Convention for the Suppression of Acts of Nuclear Terrorism, which had been finalized by the Ad Hoc Committee and approved by the General Assembly earlier that year, had been signed by 89 States as of 29 September 2005. In the light of the recommendation contained in paragraph 18 of the Ad Hoc Committee's report (A/60/37), he took it that the Committee wished to establish a working group, chaired by Mr. Perera (Sri Lanka), to continue the work of the Ad Hoc Committee and that the working group, like the Ad Hoc Committee, would be open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency.

9. *It was so decided.*

10. **The Chairman** drew attention to the proposed timetable for the consideration of items contained in paragraphs 3 to 6 of the note on organization of work (A/C.6/60/L.1), and noted that the Bureau had circulated a proposal to the effect that the report of the International Law Commission on the work of its fifty-seventh session (A/60/10) should be considered in three parts. He took it that the Committee agreed with that proposal.

11. *It was so decided.*

12. **The Chairman** said that, consistent with the established practice, the proposed programme of work would be applied with flexibility in the light of the progress made by the Committee and that the Committee would take action on draft resolutions as soon as they were ready for adoption.

13. The Committee must allow sufficient time for the preparation and consideration of the estimates of expenditures arising from draft resolutions. Since the Committee was due to conclude its work on 9 November 2005, all draft resolutions with financial implications, except for that relating to the report of the International Law Commission, must be submitted to the Fifth Committee by 28 October 2005. He took it that the Committee wished to proceed on the basis of the proposed work programme.

14. *It was so decided.*

15. **The Chairman** said that the agreed work programme took into account the need for efficient use of time and resources. During the fifty-ninth session, the Committee had lost approximately 20 hours owing to meetings starting late and ending early and its conference service utilization rate had declined from the previous year. However, that rate could be improved if meetings began on time and if, in the event that the Committee was unable to proceed with its discussion of one item, delegations were prepared to consider the next item on the agenda. Lastly, he drew the Committee's attention to paragraph 13 of General Assembly resolution 59/313, which invited Member States that were aligned with statements already made by the chair of a group of Member States, where possible, to focus additional interventions made in their national capacity on points that had not already been adequately addressed in the statements of the groups in question, bearing in mind the sovereign right of each Member State to express its national position.

16. **Mr. Malpede** (Argentina), speaking on behalf of the Rio Group, expressed concern that the meetings of the Sixth Committee were occurring simultaneously with informal consultations on agenda item 75 (a) (Oceans and the law of the sea), and 75 (b) (Sustainable fisheries). On a number of occasions during past sessions of the General Assembly, many delegations, including his own, had explained that that practice did not permit delegations with small missions in New York to give their full attention to both forums. The work of the Sixth Committee and the agenda items concerning the law of the sea and fisheries both entailed lengthy negotiations on questions of great variety and depth. The Rio Group therefore requested that they should not be scheduled simultaneously in future, and that measures should be taken immediately to resolve that problem. In particular, it requested the Chairman to hold relevant consultations with the President of the General Assembly and the coordinators of the negotiations on item 75.

Statement by the Legal Counsel

17. **Mr. Michel** (Under-Secretary-General for Legal Affairs, the Legal Counsel) stressed the importance of the 2005 World Summit Outcome, which contained many references to international law and the rule of law. Those references reflected an underlying culture within the United Nations, of which the General Assembly, and in particular the Sixth Committee, were among the primary guarantors.

18. The issue of terrorism, which featured prominently on the Committee's agenda, had already generated a great deal of public interest. In that connection, he commended the efforts undertaken by the Committee with a view to adopting a general counter-terrorism convention. The successful conclusion of the International Convention for the Suppression of Acts of Nuclear Terrorism, which had been signed by almost 90 States, was a significant step in the right direction.

19. He underlined the importance of the consideration of the report of the International Law Commission. It was vital that the Commission received the necessary input from Member States and that the Committee should take advantage of the presence of the Commission's rapporteurs. Delegations should also ensure that statements on the first topic for consideration were ready as soon as that topic appeared on the agenda.

20. He had taken note with interest of the informal activities that would take place on the periphery of the Committee's work. Open discussions on a number of sensitive questions relating to international law were important and useful and, in that regard, he commended the authors of various initiatives. Lastly, he welcomed the excellent spirit of cooperation that characterized his relationship with the Sixth Committee and pledged his continuing support for its activities.

Agenda item 79: Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session (A/60/17)

21. **Mr. Pinzón Sánchez** (Chairman of the United Nations Commission on International Trade Law (UNCITRAL)), introducing the Commission's report

on the work of its thirty-eighth session (A/60/17), said that, at that session, the Commission had finalized and approved the draft convention on the use of electronic communications in international contracts, which offered an effective set of legal rules that would facilitate economic development in all regions and countries. The draft convention would promote the use of modern means of communication in cross-border commercial transactions by providing a basis for the simplification of domestic rules on electronic commerce and by enhancing confidence and trust in its use. The new instrument had been carefully crafted to ensure that it did not negatively affect the well-established regime of the United Nations Convention on Contracts for the International Sale of Goods and that it did not interfere with the law of contract formation in general. The Commission's decision to submit the draft convention to the General Assembly and its recommendation that the Assembly should adopt the text at its sixtieth session were contained in paragraph 167 of the report.

22. Turning to the question of procurement, he said that, in 2004, Working Group I had begun its consideration of novel issues in the area of public procurement with a view to updating the Model Law on Procurement of Goods, Construction and Services. Guided by the need to prevent fraud and corruption and enhance efficiency, the Working Group had been mandated to work towards removing legal obstacles to the use of modern procurement methods. At its seventh session, held in April 2005, the Working Group had started the in-depth consideration of four preliminary topics, namely, the electronic publication of procurement-related information; other issues arising from the use of electronic means of communication in the procurement process, such as controls over their use; electronic reverse auctions; and abnormally low tenders. The Commission had commended the Working Group on the progress made and had reaffirmed its support for the review being undertaken and for the inclusion of novel procurement practices in the Model Law.

23. With regard to the settlement of commercial disputes, the Commission had noted the progress made by Working Group II regarding the issue of interim measures of protection. In particular, notwithstanding the wide divergence of views, the Working Group had agreed to include a compromise text of the revised draft of paragraph 7 in draft article 17 of the Commission's Model Law on International Commercial Arbitration. Discussions were still pending on, inter alia, draft articles relating to the recognition and enforcement of interim measures of protection issued by an arbitral tribunal and to the power of state courts to issue interim measures in support of arbitration.

24. The exponential increase in international trade had led to a corresponding increase in commercial disputes and, in that connection, the importance of arbitration as a means of resolving international commercial disputes could not be overemphasized. The Commission continued to welcome the opportunity to discuss the desirability and feasibility of further developing the law of international commercial arbitration and continued to support developments in that field. In terms of future work in the field of commercial dispute settlement, the Commission had taken note of the Working Group's suggestion that, once the consideration of existing projects had been concluded, primary consideration might be given to the issues of arbitrability of intra-corporate disputes and other issues relating to arbitrability. It had also been suggested that issues arising from online dispute resolution and the possible revision of the UNCITRAL Arbitration Rules might need consideration.

25. In the area of transport law, Working Group III had proceeded with the second reading of the draft instrument on the carriage of goods [wholly or partly] [by sea]. It had also considered, for the first time, provisions relating to electronic commerce and had approved a revised text for further consideration. In view of the magnitude of the project and of the difficulties involved in the preparation of the draft instrument, it had been agreed that 2007 would be a desirable completion date. However, the Commission would revisit the issue of establishing a completion deadline at its next session.

26. As far as security interests were concerned, the Commission had noted the progress made by the Working Group in the preparation of a legislative guide designed to establish an efficient and modern legal regime for secured transactions, which would provide significant economic benefits for States adopting it. A complete consolidated set of legislative recommendations was at an advanced stage of discussion and, with a view to achieving a comprehensive text, the Working Group had discussed additional assets at its eighth session in September

2005. Since a number of other organizations were working on related projects or had an institutional interest in that field, the Working Group was coordinating its work with those organizations, which included the Hague Conference on Private International Law, the International Institute for the Unification of Private Law and the World Intellectual Property Organization. The Commission had commended the Working Group on its progress and had requested it to expedite its work so as to submit the draft legislative guide to the Commission at its 2006 session.

27. Turning to other aspects of UNCITRAL's work, he recalled that in 2001 the Commission had mandated its secretariat to prepare an analytical digest of case law relating to the United Nations Convention on Contracts for the International Sale of Goods. At its thirty-eighth session, the Commission had expressed satisfaction with the progress of the work on that case-law information system, noting the publication of the digest in December 2004. The first draft of a digest of case law relating to the Model Law on International Commercial Arbitration had been discussed at the meeting of national correspondents held in conjunction with the thirty-eighth session.

28. Technical assistance to law reform remained an indispensable element of the Commission's work. The technical assistance and coordination unit established within the Commission's secretariat in 2005 had begun the process of identifying national and regional needs for technical assistance. Opportunities for the development of joint technical assistance programmes with national, regional and international organizations were also being explored. The Commission reiterated its appeal to all States, international organizations and other interested entities to cooperate with UNCITRAL in providing technical assistance and to consider making contributions to the UNCITRAL Trust Fund to meet the increasing demand for such assistance.

29. The active pursuit of coordination and cooperation with other organizations in areas of international trade law of mutual interest remained a priority. The Commission's secretariat had prepared the first of a series of annual surveys on the work of international organizations related to the harmonization of international trade law focusing on substantive legislative work. A similar survey on the activities of international organizations providing technical assistance to law reform in the areas of international trade law of interest to the Commission was to be prepared for its thirty-ninth session. Detailed reports on electronic commerce and insolvency law had also been drawn up. In the latter area, the Commission would continue coordinating and cooperating with the World Bank and the International Monetary Fund to facilitate the development of a unified international standard. The Commission was also cooperating with the United Nations Office on Drugs and Crime in the field of fraud and falsification of identity.

30. UNCITRAL continued to monitor the legislative implementation of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The Commission appealed to those States that had not done so to provide their replies to the questionnaire circulated by the UNCITRAL secretariat on the subject.

31. Lastly, he noted that 2005 had marked the twentieth anniversary of the adoption of the UNCITRAL Model Law on International Commercial Arbitration and the twenty-fifth anniversary of the United Nations Convention on Contracts for the International Sale of Goods. The Commission's secretariat had organized and co-sponsored conferences to celebrate those anniversaries in various regions. In 2006 a series of conferences would be held to mark the thirtieth anniversary of the UNCITRAL Arbitration Rules, and in 2007, in the context of its fortieth session, the Commission planned to organize a congress in Vienna to review the results of its past work, assess current work programmes and consider and evaluate topics for future work. The General Assembly might wish to acknowledge the importance of those activities for the coordination and promotion of further modernization, harmonization and unification of international trade law.

32. **Mr. Buhler** (Austria) expressed his delegation's satisfaction with the efforts of the Commission's secretariat to increase coordination and cooperation with other international organizations active in the field of international trade law and urged the secretariat to continue and intensify that work. The Commission's most important achievement during the past year had undoubtedly been the approval of the draft convention on the use of electronic communications in international contracts, aimed at enhancing legal certainty and commercial predictability where electronic communications technology was used in relation to international contracts.

33. Austria had followed with interest the work of the Commission on procurement, arbitration, transport law and security interests and commended the respective working groups for the progress made in those areas. It attached particular importance to the work on a draft legislative guide on security interests and looked forward to its early completion.

34. His delegation welcomed the fact that two meetings relating to the Commission's work were to be held in Vienna: a conference on the UNCITRAL Arbitration Rules, which would be held in 2006 under the auspices of the International Arbitral Centre of the Austrian Federal Economic Chamber, and a congress to review the past and present work of the Commission and the related work of other organizations and to consider topics for future work, to be held in 2007. He noted also that the Willem C. Vis International Commercial Arbitration Moot was held every year in Vienna. He wished to highlight the importance of the Moot, which afforded a unique opportunity to introduce future generations of lawyers around the world to the work of UNCITRAL. He therefore encouraged other delegations to circulate information on the Moot to law schools and universities in their countries.

35. **Ms. Collet** (France) said that the finalization of the draft convention on the use of electronic communications in international contracts was one of the most important outcomes of the Commission's thirty-eighth session, which had been extraordinarily productive. Given the growth of electronic communications, it was certainly useful to create the necessary conditions for the legal recognition of electronic documents, including the safeguards needed to ensure their preservation and integrity; however, her delegation regretted that insufficient attention had been paid to the fundamental notion of legal certainty, which was essential where electronic commerce was concerned. In particular, it would have wished to see a requirement that the parties to an electronic contract must provide information regarding their place of business.

36. France welcomed the increase in the membership of UNCITRAL to 60 States and looked forward to active participation by all members in the Commission's work. The Commission's activities relating to the coordination of the work of international organizations and the publication of documents describing that work had been very useful. Her delegation hoped that the growth in the Commission's resources would enable it to play a central role within the United Nations system in all matters relating to international trade law, in accordance with its mandate.

37. While continuing to take advantage of the advice and information provided by experts, the Commission could and should increasingly assume responsibility for the various draft instruments under development. The additional resources would enable it to use independent experts, rather than those offered by professional bodies, which, as was to be expected, represented the interests of their members.

38. While it was useful for the Commission to coordinate its activities with those of the international financial institutions, no formal ties should be established between their respective areas of work. UNCITRAL's role in matters of national trade law, which fell outside its mandate, was to provide legal advice and develop legislative models and guides, which States were free to utilize as they saw fit.

39. Lastly, her delegation wished to highlight an issue which it considered crucial: respect for the official languages of the Commission. In a highly technical field such as commercial law, full participation by delegations, especially French-speaking ones, was dependent on the availability of language services. Translation and interpretation should therefore be assured in order to enable the Commission to fulfil its mandate effectively.

40. **Mr. Watson** (United Kingdom) said that his delegation welcomed the successful conclusion of the draft convention on the use of electronic communications in international contracts, which recognized a number of complexities and reflected the work of regional economic integration organizations such as the European Union. The United Kingdom looked forward to participating in future working groups with a view to establishing international guidelines and best practice to complement domestic legislation and would recommend working closely with existing industry organizations on the issues involved.

41. His delegation had participated in the work of the Working Group II (Arbitration and Conciliation) and would continue to do so. The United Kingdom agreed that the compromise arrived at by the Working Group on the issue of ex parte interim measures remained extremely controversial and would support the proposal that the provision, if included, should be in

the form of an opting-in provision, applying only where the parties had expressly agreed to its application. It supported the Commission's hope the Working Group would present its proposals for final review and adoption in 2006. It was also pleased to note that the thirtieth anniversary of the UNCITRAL Arbitration Rules was to be celebrated and would attend the 2006 Vienna conference.

42. His delegation welcomed the discussion by the Commission of future work on insolvency law and would be pleased to take part in the colloquium to be held in November 2005.

43. **Mr. Boonpracong** (Thailand) said that his country had always attached importance to the development, modernization and harmonization of international trade law, which would provide countries, especially developing ones, with a tool to deal with the increasing volume and complexity of international trade and business resulting from globalization, while also enhancing the confidence of potential investors and promoting trade and development. Thailand had participated actively in the work of the Commission and had closely followed the work of other international organizations in the area of international trade law. The international legal instruments developed by UNCITRAL had played an important role in the development of Thailand's commercial laws, notably those on electronic commerce and electronic signatures. Recognizing the need to reduce uncertainty as to the legal effects of the increasing use of electronic communications in international trade, his delegation supported the recently concluded draft convention on the use of such communications in international contracts, which would once again serve as the basis for the development of national legislation in Thailand.

44. As international trade-related legal instruments had also been developed and harmonized in other international forums, Thailand strongly favoured greater coordination and cooperation between UNCITRAL and other organizations in order to prevent possible duplication of work and inconsistency in such instruments. His delegation supported the use of official travel funds for travel to meetings with those organizations.

45. His delegation believed that the development of international trade law should be accorded the same attention within the United Nations as other areas of international law. In Thailand's view, the resources allocated to the UNCITRAL secretariat should be increased.

46. Thailand welcomed with appreciation UNCITRAL's new website, launched in June 2005, and encouraged the secretariat to continue striving to improve it. The site's greater functionality enhanced its role as an important component of the Commission's overall programme of information activities and training and technical assistance. Lastly, Thailand supported the convening of the UNCITRAL congress in 2007 and looked forward to participating in the preparation process.

47. **Mr. Metelitsa** (Belarus) commended the work of the thirty eighth session of the Commission and of its working groups and said that his Government was adopting measures which would enable it to accede to the future convention on the use of electronic communications in international contracts and to recognize deals concluded between Belarusian and foreign companies by means of such communications. An interdepartmental working group headed by the Deputy Prime Minister had been set up to develop a national system of electronic commerce.

48. His Government supported the work of Working Group I and took a positive view of the endeavours of Working Group II to widen the use of agreed procedures and to secure the introduction of modern methods of mediation and conciliation, since it was convinced that such activities would permit a substantial strengthening of the multilateral system for the settlement of commercial disputes through the participation of non-governmental organizations specializing in the resolution of disputes of that nature. Like many other Member States, Belarus was concerned by the rising number of cases in which the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) was flouted, inter alia through failure to comply with the requirement to put arbitration agreements between parties to international transactions in writing. If that trend were to spread, it would seriously jeopardize the universality of the system for executing foreign arbitral awards and might adversely affect foreign trade.

49. The Commission's monitoring of the implementation of the New York Convention was therefore welcome and an international exchange of data about the execution of foreign arbitral awards was

essential. Information regarding the recognition and enforcement of such awards in Belarus had been sent to the Commission's secretariat in August 2005. The economic courts of Belarus were studying with interest accounts of the manner in which the provisions of such international agreements were implemented by the national courts of other States.

50. The draft instrument on the carriage of goods [wholly or partly] [by sea] ought to cover a broad spectrum of questions and regulate relations in the sphere of marine transport in as much detail as possible. His Government also supported the Commission's efforts to devise an efficient legal regime for security interests in goods involved in a commercial activity and hoped that it would soon complete its work on a guide on secured transactions for legislative bodies, as that would have a beneficial effect on the accessibility and value of credit.

51. As the provision of technical assistance and staff training significantly promoted the introduction of UNCITRAL standards in national law, Belarus was prepared to support any initiatives aimed at strengthening the capacity of the Commission's secretariat in that area. It was likewise in favour of offering technical assistance for law reform and welcomed the lengthening of the list of possible venues for conferences and seminars designed to improve the recognition and application of UNCITRAL documents.

52. His Government was interested in further constructive and mutually beneficial cooperation with the Commission. For that reason, it had set up a council to initiate closer contacts between UNCITRAL and Belarusian State organs and to bring about the effective incorporation of international trade law in Belarusian legislation. It therefore looked forward to further constructive cooperation at the thirty-ninth session of the Commission.

53. **Mr. Shin** (Republic of Korea) said that his delegation welcomed the finalization of the draft convention on the use of electronic communications in international contracts. His country had based its own Basic Electronic Transaction Act and Electronic Signatures Act of 1999 on the UNCITRAL Model Laws on Electronic Commerce and on the Electronic Signatures, thus demonstrating its commitment to the Commission's goals and guidelines.

54. Although his Government agreed that the great progress made on the draft instrument on the carriage of goods [wholly or partly] [by sea] was attributable largely to informal working methods, that approach had certain flaws. At the most recent session of Working Group III, there had been a lack of cooperation between the informal intersessional working group and the secretariat with regard to the agenda and documentation. The agenda had not been issued until the last moment, and it was unacceptable that the Working Group should use as a basis for its discussions documents produced by the informal group which had not been available in all official languages sufficiently in advance of the meeting. The agenda must be set through close cooperation between the informal group and the secretariat, in order to guarantee that the discussion would proceed in a satisfactory manner.

55. Working Group II had agreed, despite the wide divergence of views on the matter, to include the draft revised text regarding ex parte interim measures in the draft Model Law on International Commercial Arbitration, on the understanding that the provision would apply unless agreed otherwise by the parties and that no enforcement procedure would be provided for. However, that hard-fought compromise solution might cause uneasiness between the two opposing groups in future, and should not be disregarded at a later stage. More years must not be lost; it was to be hoped that the compromise would lead to completion of the work in 2006, as planned.

56. He commended the Commission on the progress made on the draft legislative guide on secured transactions and on the groundwork for a revision for the Model Law on Procurement of Goods, Construction and Services, and welcomed its efforts to expand training and technical assistance activities and to organize seminars and consultations in various countries. His Government looked forward to continued participation in the process of harmonizing and unifying international trade law.

57. **Mr. Andjaba** (Namibia), speaking on behalf of the African Group, expressed support for the Commission's recommendation that the General Assembly adopt during the current session, the draft convention on the use of electronic communications in international contracts, an instrument which would eliminate the uncertainty currently surrounding the legal value of electronic communications in international contracts.

58. The African Group noted with keen interest the progress made by the Working Groups on Procurement, Arbitration and Conciliation, Transport Law and Security Interests. In addition, it attached great importance to the Commission's work in the area of capacity-building and technical assistance to developing countries and countries in transition, which was of great benefit. Unfortunately, that work relied heavily on unpredictable extrabudgetary funding, and when no voluntary contributions were received, the work had to be suspended. The African Group was deeply grateful, in that regard, to Mexico, Singapore and Switzerland for their contributions to the Trust Fund for Symposia, and urged other countries to contribute. It noted with concern that no recent contributions had been made to the trust fund for travel assistance. Consequently, developing countries in Africa and elsewhere were unable to send their experts to the meetings of the Commission and its working group because the costs were beyond their reach. In that regard, the African Group recalled that the original mandate of the Commission emphasized the need to take developing country's interests into account. For UNCITRAL instruments to gain universal acceptability, participation in UNCITRAL meetings should be inclusive.

59. Lastly, the African Group welcomed the establishment of legislative and technical assistance units within the Commission's secretariat, applauded the continuing work of the system established for the collection and dissemination of case law on UNCITRAL texts (CLOUT), and welcomed the publication of the digest on the case law of the United Nations Sales Convention.

60. **Mr. Pang** (Singapore) said that his country took pride in the fact that its representatives had made substantial contributions to the formulation of both the United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International Commercial Arbitration, which had been incorporated into its domestic law. It was actively promoting those instruments among the countries of the region. Furthermore, one of the seminars held to commemorate the anniversaries of those instruments, and to launch the UNCITRAL digest of relevant case law had been held in Singapore, under the auspices of the Commission and the Singapore International Arbitration Centre.

61. As a small country that was heavily reliant on international trade, Singapore was attracted by the potential of electronic commerce, and therefore welcomed the finalization of the draft convention on the use of electronic communications in international contracts, an effort in which Singapore was pleased to have participated. It was keenly aware of the work of the Working Groups on Arbitration and Conciliation, Transport Law and Procurement. In that regard, it looked forward to the completion of the work of the Working Group on Arbitration; would like to see improved modalities in the work of the Working Group on Transport Law so as to enable greater participation by all interested members; and hoped for clearer direction in the work of the Working Group on Procurement. The work of those bodies should be efficient, effective and expeditious.

62. Singapore looked forward to continued collaboration with the Commission on its expanded technical assistance programmes. His country was proud of its contributions to the work of the Commission, and thereby to the establishment of an interdependent, prosperous and peaceful world order.

63. **Mr. Lavalle-Valdes** (Guatemala) said that his Government had always believed that the work of the Commission deserved to be held in higher regard. The Commission's productivity was extraordinary, as was demonstrated by the significant contributions made since 2000 to the harmonization and progressive unification of international trade law.

64. The draft convention on the use of electronic commerce in international contracts, finalized at the Commission's 2005 session, could not be more important and topical, and usefully complemented the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Model Law on Electronic Signatures. His delegation was gratified to see that the report before the Committee described in detail the debates held and the decisions made in the Commission in the preceding year. In addition to the intrinsic interest of such information, it should also prove valuable in interpreting and implementing the new convention. The best example in that regard was perhaps the interpretation of the word "party" in article 9, paragraph 3, of the convention; on reflection in could be concluded that the word applied not only to the parties to a contract per se but also to any person who was involved in any capacity in the conclusion of the contract. That interpretation was consistent with article

32 of the Vienna Convention on the Law of Treaties, as was confirmed in paragraph 61 of the report. It could therefore be deduced that the word "party" applied, in particular, to notaries.

65. Guatemala hoped that States parties to the new convention would either refrain from using, or use only with great care, the power granted under article 19, paragraph 2 and article 21, paragraph 1. If they did do so, they should ensure that declarations made pursuant to those articles were compatible with the object and purpose of the Convention.

66. In addition, his Government hoped that the detailed overview on the Commission's future work in the area of electronic commerce, to be prepared by the secretariat in accordance with paragraph 214, could be reviewed by the Working Group on Electronic Commerce in autumn 2006, even though paragraphs 240 and 240 indicated that no sessions of that Working Group were scheduled for either autumn 2005 or autumn 2006.

67. **Mr. Playle** (Australia) said that his Government welcomed the work done by the Commission since the fifty-ninth session of the General Assembly, and was pleased that agreement had been reached on the draft convention on the use of electronic communications in international contracts. It also welcomed the focus of the Working Group on Procurement on matters of authentication and registration through the Internet of tender management systems in the context of its revision of the Model Law on Procurement of Goods, Construction and Services. However, it was disappointed that the issue of ex parte interim measures continued to delay conclusion of the draft revisions to the Model Law on International Commercial Arbitration, and joined with others in seeking a speedy resolution.

68. He noted the work of the Working Group on Transport Law in considering the draft instrument on the carriage of goods [wholly or partly] [by sea], and said that transport by sea was essential to Australia's international trade, and so therefore was the issue of liability for loss or damage to sea cargo. Australia was seeking a regime that would strike a fair balance between the interests of shippers and carriers which was crucial if the instrument was to be widely accepted.

69. His delegation also noted the work of the Working Group on Security Interests in preparing the draft legislative guide on secured transactions, and looked forward to future work of the Working Group on Insolvency Law, now that the UNCITRAL Legislative Guide on Insolvency Law had been concluded. Moreover, Australia commended the Commission for coordinating and cooperating with other international organizations, and in particular, its provision of technical assistance to developing countries and countries in transition.

The meeting rose at 6 p.m.

United Nations A/C.6/60/SR.2

General Assembly
Sixtieth session

Official Records

Distr.: General
24 October 2005

Original: English

Sixth Committee

Summary record of the 2nd meeting
Held at Headquarters, New York, on Tuesday, 4 October 2005, at 10 a.m.

Chairman: Mr. Yañez-Barnuevo ..... (Spain)

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Agenda item 155: Observer status for the Latin American Integration Association in the General Assembly

Agenda item 156: Observer status for the Common Fund for Commodities in the General Assembly

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05-53476 (E)

The meeting was called to order at [illegible]

Agenda item 79: Report of the United Nations Commission on International Trade Law on the work of its thirty-eighth session (continued) (A/60/17)

1. **Mr. González Campos** (Spain), commenting on the work of UNCITRAL over the past year and observing that the addition of 21 new countries to the Commission in June 2004 was already beginning to yield results, he hoped that the necessary technical and administrative resources would continue to expand accordingly. He also endorsed the appeal made by the representative of Mexico on behalf of the Rio Group for increased financial assistance to enable more States to participate in the meetings of the various working groups.

2. [illegible] the increasing importance of the [illegible] commercial law, [illegible] of electronic commerce was not in question. Clarity and certainty in that area would benefit all States and [illegible] the efficiency of the work of UNCITRAL and encourage its continuing relevance. [illegible] international texts which would be flexible in their application and enhance legal certainty.

3. His delegation welcomed the progress made by Working Group [illegible] in updating the UNCITRAL Model Law on Procurement of Goods, Construction and Services, which would help to promote transparency and efficiency and harmonize procurement laws and practices. [illegible] Working Group IV (Electronic Commerce) and [illegible] Working Group V (Insolvency Law) [illegible] the work [illegible] UNCITRAL Model Law on Cross-Border Insolvency. The draft convention [illegible] the enforcement of foreign arbitral awards [illegible] the settlement of disputes in the context of global trade. [illegible] Working Group III (Transport Law) [illegible] the scope of future work in that area. His delegation supported the proposal [illegible] the Working Group [illegible] the carriage of goods [illegible] sea, [illegible] the Commission [illegible] the preparation of a convention [illegible] the carriage of goods [illegible] sea [illegible] the Hamburg Rules [illegible] the Hague-Visby Rules [illegible] the carriage of goods by sea [illegible] the Working Group

Law on International Commercial Arbitration, especially with regard to interim measures of protection, and agreed that the thirtieth anniversary of the adoption of the UNCITRAL Arbitration Rules in 2006 should be marked by the organization of national and regional workshops to exchange information on the application and possible areas of revision of the Rules.

14. He also commended the progress made in the areas of transport law and security interests, in particular the efforts of Working Group III to move towards the completion and adoption by 2007 of the draft instrument on the carriage of goods [wholly or partly] [by sea]. Over the past two years, some delegations had been conducting informal consultations in that regard, mainly by e-mail, between the sessions of the Working Group. That method had some merits but risked excluding Member States with poor access to the Internet. A procedure should therefore be established for updating other members of the Commission on the progress of informal consultations. With regard to future work on insolvency law, Nigeria endorsed the plan to hold an international colloquium in Vienna in November 2005.

15. Nigeria continued to support the collection and dissemination of case law on UNCITRAL texts and welcomed the fact that 46 issues of CLOUT, dealing with 530 cases, had been prepared for publication.

16. Trade remained one of the central pillars for maintaining solid relations among States. The Commission should therefore be unrelenting in its efforts to fulfil its mandate and should continue to cooperate with like-minded bodies and individuals to further its objectives. Furthermore, given the alarming increase in commercial fraud, Nigeria welcomed the Commission's willingness to work with the United Nations Office on Drugs and Crime (UNODC) on the preparation of a study on fraud and to develop useful practices, guidelines or other materials on that basis. Those joint efforts should help reduce the menace of commercial fraud and its negative impact on international business relations and national development.

17. With regard to training and technical assistance, Nigeria expressed its appreciation to those countries that had contributed to the UNCITRAL Trust Fund for Symposia. However, it was regrettable that no contributions had been made to the Trust Fund for Travel Assistance, resulting in insufficient participation

by delegations from developing countries in the work of the Commission. Nigeria therefore echoed the Commission's appeal for generous contributions to that Trust Fund. It also urged Member States to consider the need for more regular and predictable funding and to remove agricultural subsidies and high import tariffs that impeded the Commission's efforts to harmonize international trade.

18. **Mr. Adsett** (Canada) said that the harmonization of commercial law was a key element in the development of international trade, providing more consistent national laws so as to ensure a climate conducive to business. The draft convention on the use of electronic communications in international contracts, for example, would foster international trade by ensuring that such contracts would be valid regardless of whether they were in paper or electronic form. His Government had adopted legislation based largely on UNCITRAL's work in the area of electronic commerce.

19. The ongoing work of the Commission in the areas of arbitration, procurement, security interests and transport law would be of great value. His Government also welcomed its work on the extension of the insolvency law to include cross-border insolvency issues and urged other States to participate in such work.

20. His delegation continued to be concerned about the application to the work of UNCITRAL of United Nations directives on limiting the length of Secretariat reports to 16 to 20 pages. Full reporting of UNCITRAL deliberations, including the reasoning behind the choices made in drafting its texts, helped States to understand the policy considerations underlying provisions of a given instrument and was important for the interpretation and application of UNCITRAL instruments. Canada would therefore welcome the opportunity to discuss with others how such critical information might be made available in a cost-effective manner.

21. **Mr. Muchemi** (Kenya) said that the international trading system could function effectively only in the presence of a comprehensive and harmonized international legal regime of the type promoted by the Commission since its establishment. Kenya welcomed the finalization and adoption of the draft convention on the use of electronic communications in international contracts. However, many developing countries faced technological difficulties that might delay their full acceptance and application of the draft convention. He therefore urged UNCITRAL, in its technical assistance programmes, to address the digital divide in the area of international electronic commerce so as to enable universal implementation of the draft convention.

22. Kenya welcomed the establishment of the legislative and technical assistance units within the UNCITRAL secretariat and reiterated the Commission's appeal for generous donations to the Trust Fund for Travel Assistance. It was a matter of concern that, despite repeated appeals for donations, no contributions to that Trust Fund had been received since the Commission's thirty-seventh session, with the result that the meetings of the Commission and its Working Groups were increasingly dominated by experts from developed countries who could afford the cost of regular travel to New York or Vienna. The Commission should therefore seriously consider exploring other methods of raising funds for travel assistance in order to supplement voluntary contributions.

23. He commended the progress made by the various Working Groups of the Commission in their respective projects, in particular the ongoing review of the UNCITRAL Model Laws on Procurement of Goods, Construction and Services and on International Commercial Arbitration and the work on the draft instrument on the carriage of goods [wholly or partly] [by sea]. With regard to security interests, he urged the Commission to increase its collaboration with other international agencies. In particular, the World Bank and the International Monetary Fund had already established guidelines on insolvency and creditor rights systems that might need to be harmonized with the work of UNCITRAL in order to prevent conflicts and duplication.

24. Some delegations had expressed concern, during the thirty-eighth session of the Commission, at the lack of transparency in the convening of informal meetings of the Working Groups. He called upon the Commission to address those concerns at its future meetings.

25. Kenya welcomed the continuing work on the collection and dissemination of case law on UNCITRAL texts (CLOUT), which was an important aspect of overall training and technical assistance activities. The wide distribution of CLOUT texts

promoted the uniform interpretation and application of UNCITRAL texts by facilitating access to decisions and awards from many jurisdictions.

26. Kenya had demonstrated its commitment to and recognition of the value of the Commission's work by implementing some of the main UNCITRAL instruments at the national level. It was a party to the United Nations Convention on the Carriage of Goods by Sea and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It had also enacted legislation based on the UNCITRAL Model Law on International Commercial Arbitration and the UNCITRAL Model Law on Procurement of Goods, Construction and Services. It was in the process of enacting and amending other legislation relating to commercial law, using UNCITRAL texts as a reference point.

27. **Mr. Jiti** (India) observed that the thirty-eighth session of UNCITRAL had been very productive and said the approval by the Commission of the draft convention on the use of electronic communications in international contracts would help to harmonize domestic legislation and overcome legal uncertainty in international business transactions. The convention incorporated many of the essential principles of the Model Law on Electronic Commerce, including party autonomy and legal recognition of electronic communications. Some principles had been significantly modified for the sake of legal certainty, especially provisions on the time and place of dispatch and receipt of electronic communications. New principles had also been incorporated in the draft convention, including invitations to make offers and the use of automated message systems, which mainly addressed legal concerns that had arisen since the adoption of the Model Law in 1996.

28. His delegation would like to express its appreciation to Working Group IV (Electronic Commerce) for providing a readily accessible model for online contracts dealing with the sale of goods. Earlier UNCITRAL initiatives in electronic commerce had taken the form of model laws which signatories could choose to follow in domestic legislation. The present instrument, however, went much further. If it was adopted, signatories would be agreeing to directly recognize common terms in contract law.

29. Working Group II (Arbitration and Conciliation) had made efforts to reconcile differing positions on the issue of ex parte interim measures. One such effort was the new opting-out proposal relating to draft article 17 of the Model Law on International Commercial Arbitration. An opting-in clause would be more appropriate than an opting-out provision, as it would give the parties discretion to choose preliminary orders if required in the light of the nature of the dispute.

30. Working Group III (Transport Law) had made progress on a number of difficult issues. At its fifteenth session, the Working Group had focused on issues relating to freedom of contract, jurisdiction and arbitration. The issue of freedom of contract had gained momentum in Working Group III because of a proposal for inclusion of volume contracts within the scope of the draft legal instrument. Traditionally, those contracts were excluded from contracts on the carriage of goods. However, in view of the increasing number of such contracts in practice, the Working Group had agreed to its inclusion in the draft legal instrument, but it had reiterated that such contracts should not derogate "from the mandatory provisions on maritime safety, liability, jurisdiction and protection of third parties". The Working Group had accepted a "one-way" approach whereby liability could not be reduced contractually but could be enhanced. His delegation welcomed the inclusion of new provisions in the field of international transportation on right of control and transfer of rights.

31. His delegation also noted with satisfaction the progress made in other Working Groups and was confident that the Commission would be able to carry out its ambitious plans for further development of the international legal instruments in the field of international trade law.

32. **Mr. Tajima** (Japan) noted the progress made in revising the UNCITRAL Model Law on Procurement of Goods, Construction and Services. While that instrument needed to be adjusted to changing circumstances, particularly the growing use of electronic communications, it had contributed significantly to the unification and coordination of domestic laws, and hence to the development of international trade.

33. With regard to the Commission's work on arbitration, he observed that alternative dispute resolution, which included arbitration, had become more important as a means of facilitating the swift settlement of disputes. Japan, whose Arbitration Act

had been amended in accordance with the UNCITRAL Model Law on International Commercial Arbitration, had followed with interest the discussion in Working Group II concerning the amendment of the Model Law, the possible requirement that arbitration agreements should be in written form, and interim protection measures, and it looked forward to further progress.

34. The work on transport law with respect to the international carriage of goods by sea was especially important because it should in due course facilitate the resolution of problems not addressed by existing legal frameworks. However, some difficult issues concerning the draft instrument, including that of its scope of application, still had to be resolved.

35. Japan welcomed the approval of the draft convention on the use of electronic communications in international contracts, which should facilitate the harmonization of the relevant domestic laws.

36. With regard to insolvency law, Japan hoped that each country's domestic laws would be drafted in accordance with the UNCITRAL legislative Guide on Insolvency Law, as that would enhance the reliability and efficiency of insolvency procedures.

37. Japan considered it essential to formulate a legislative guide for security interests in goods, as that would promote the provision of credit and enhance economic growth and international trade. At the same time, it was important to consider the coordination of each country's existing national legislation in that area with a view to developing a harmonized international legal regime. The formulation of such a regime would entail addressing the difficult question of how to treat the rules of private international law.

38. **Mr. Medrek** (Morocco) said that, as a member of UNCITRAL, Morocco continued to follow its work with great interest, noting in particular the approval of the draft convention on the use of electronic communications in international contracts. It was to be hoped that the instrument would be adopted by the General Assembly at the current session, as it would promote economic development and reduce the risk of abuse and commercial fraud.

39. The Model Law on Procurement, while representing at the international level a milestone in the reform of the law governing procurement practices, might usefully be updated to take into account new practices such as the use of electronic communications in that area and the experience gained from its application as a basis for the reform of procurement legislation.

40. As for the work on arbitration and conciliation, in particular the proposed revision of article 17, paragraph 7, of the Model Law on International Commercial Arbitration, two further sessions should suffice for Working Group II to complete its work in 2006. Upon its completion, priority should be given to the issues relating to arbitrability, in particular the arbitrability of intra-corporate disputes, but also arbitrability in the fields of immovable property, insolvency and unfair competition.

41. He welcomed the progress made by Working Group VI (Security Interests), notably in regard to the set of legislative recommendations, and in regard to coordination with other organizations active in that field. He also commended the continuing work under the system for the collection and dissemination of case law on UNCITRAL texts (CLOUT), which was an important tool for UNCITRAL training and technical assistance activities and should receive the widest possible dissemination. The secretariat was to be commended for defining the goals of the technical assistance unit and for beginning to identify national and regional needs for technical assistance, in conjunction with national, regional and international organizations and permanent missions to the United Nations, as well as opportunities for the development of joint programmes with and participation in existing programmes of organizations providing technical assistance to trade law reforms.

42. He thanked the States and organizations that had contributed to the Trust Fund for Symposia and appealed to all concerned for additional contributions so as to enable the secretariat to meet the increasing technical assistance needs of developing countries and countries in transition, especially those in Africa.

43. **Ms. Taj El Dine** (Bolivarian Republic of Venezuela) said that UNCITRAL was making a valuable contribution to the harmonization and progressive unification of international trade law, with due regard for the interests of developing countries. However, certain areas remained within the exclusive limits of each State's domestic legislation or traditions and UNCITRAL should therefore not seek to regulate them.

44. Her country supported the Commission's efforts to improve its coordination with other bodies of the United Nations system concerned with international trade law, with a view to avoiding duplication of effort. Such coordination would help to promote the unification and harmonization of international trade law. Her country also supported the strengthening of the UNCITRAL secretariat, which would entail the provision of the necessary resources.

45. In its work on transport law, the Commission should concern itself solely with the carriage of goods by sea; the scope of the legislative instrument should not be expanded to cover multimodal transport operations. On the subject of electronic commerce, the rules established were important to her country, since its customs regulations did not provide for import duties on digital or electronic products. During the moratorium granted by the World Trade Organization, the relevant tax authorities should accordingly study in depth the technical feasibility and advisability of establishing legal votes for electronic transmissions. Given the importance of provisions on jurisdiction in the field of economic commerce, it would be preferable to establish basic principles rather than proposing rules covering its jurisdiction and the choice of law by private parties or providing solutions for every type of operation. In any case, her country, in accordance with its Constitution, did not admit choice of jurisdiction of the applicable law in the case of public-interest contracts.

46. Similarly, her country was not a party to any treaty on cross-border insolvency, which was not recognized by its laws. It therefore welcomed the formulation by UNCITRAL of the Model Law on Cross-Border Insolvency, together with a guide for its incorporation into domestic law, which offered a rapid and simple means of updating private international law without prejudice to the Constitution, public order or the interests of the country.

47. Her country welcomed the progress made with regard to international commercial arbitration, but emphasized that in the case of public-interest contracts its Constitution provided that its national courts had exclusive jurisdiction and that its domestic law must be applied.

48. Her country supported the Commission's training and technical legislative assistance programme and its information seminar and mission, and considered that travel assistance should be provided to developing countries that were members of the Commission.

49. **Ms. Lyubalina** (Russian Federation) commended the Commission's report and said that the Commission had been very productive. However, the late submission of the report owing to translation delays had not allowed delegations enough time to give due consideration to its content.

50. The adoption of the draft convention on the use of electronic communications in international contracts was the Commission's most significant achievement at its thirty-eighth session. The convention was the result of years of painstaking effort and would strengthen the fundamental legal principles and rules governing cross-border electronic trade. Such an instrument had become necessary because of the significant growth in trade operations involving modern technology and the widespread use of electronic communications in international contracts.

51. Although the draft convention dealt with only a limited number of issues, its adoption established a good basis for the promotion of electronic commerce and the development of business. However, much remained to be done to build trust in electronic commerce. It would also be useful to define areas in which the Commission might conduct future regulatory work so as to promote coordination with other organizations in order to avoid duplication.

52. She recalled that several States, including the Russian Federation, had proposed that the provisions of the draft convention concerning regional economic integration organizations should be broadened so as to cover international organizations generally. Regrettably, that proposal had not received sufficient support.

53. Her delegation commended the work of all the Working Groups, in particular Working Group I (Procurement), which had already begun preparing proposals for the revision of the Model Law, covering inter alia the use of electronic communications in the procurement process. Lastly, her delegation welcomed the continuing work on a legislative instrument on issues relating to the international carriage of goods by sea and commended the activities of the Commission in other areas such as arbitration and security interests.

54. **Mr. Guan Jin** (China) congratulated UNCITRAL on the approval of the draft convention on the use of electronic communications in international contracting

and on the high quality and efficiency of its work. China participated actively in the work of the UNCITRAL Working Groups and Chinese delegates from various backgrounds participated in UNCITRAL's thematic activities with a view to better disseminating the results of UNCITRAL's work in China. The diverse character of the Commission's membership was an asset making its work forward-looking, authoritative and representative. The topics currently under consideration focused on international trade issues to which an integrated and coordinated response was urgently needed at the national and regional levels. In order to gain wider acceptance of the legal instruments it prepared, the Commission should take greater account in its drafting work of the views of all parties and of the differing situations of the various countries. It should also do more to raise public awareness concerning those instruments, in particular by strengthening technical training in developing countries so that they might better benefit from its work.

55. **Mr. Tugio** (Indonesia) noted the important work done by UNCITRAL in promoting the development and harmonization of international trade law and commended the Commission for taking practices and legal systems in all regions into account when formulating its conventions and model laws, thereby ensuring that those instruments could be applied universally once they entered into force. In particular, he congratulated UNCITRAL on the finalization of the draft convention on the use of electronic communications in international contracts, which was an important step towards eliminating legal obstacles to electronic commerce.

56. Given the advances in technology, it was important that the draft convention should build confidence in the use of electronic communication while simultaneously curbing possible abuses and commercial fraud. By so doing, it could serve as a useful basis for simplifying domestic rules on electronic commerce. Because transactions involving electronic commerce were likely to grow rapidly in developing countries in the coming years, it was important to have standard regulations which could facilitate that growth. He suggested that UNCITRAL should render technical assistance to developing countries to enable them to study the draft convention thoroughly before they implemented it at the domestic level, thus encouraging broader participation in such commerce.

57. **Mr. Kanu** (Sierra Leone) said that the completion by UNCITRAL of the draft convention on the use of electronic communications in international contracts was a significant contribution to the development of international contract law and an important tool for the establishment of a sound environment for electronic contracting and economic development. His delegation attached great importance to the work of the Commission in other areas of international trade, including arbitration, security interests, transport law and procurement.

58. Many lawyers in developing countries, especially in West Africa, had tended to consider trade law harmonization as a luxury. Fortunately, such a misconception had changed dramatically and developing countries now viewed UNCITRAL as an invaluable source of inspiration and assistance in their struggles to participate fully in the global economy.

59. The June 2005 meeting of the Group of 77 and China in Doha had been a stark reminder of the great desire of developing countries to share in the benefits of the global economy through sustainable development. The economies of developing countries must be integrated into the global market and a solid foundation laid for business to thrive in their domestic markets. There was therefore a need for the developing countries to adjust their laws and policies to promote trade. The texts prepared by UNCITRAL were reliable sources for such an adjustment. Lastly, the organizers of forthcoming conferences on matters pertaining to UNCITRAL should endeavour to encourage the widest possible participation by providing assistance to delegations from developing countries which, owing to budgetary constraints, might otherwise be unable to take part.

60. **Mr. Makarowski** (Sweden), speaking on behalf of the five Nordic countries (Denmark, Finland, Iceland, Norway, and Sweden), said that his delegation welcomed the Commission's report on the work of its thirty-eighth session. The work of UNCITRAL was productive and highly successful in developing international trade law. International cooperation in that field was necessary in order to achieve effective trade, which was essential for economic development. The approval by the Commission of the new convention on the use of electronic communications in

international contracts was another important step forward in the development of international trade law. The draft convention provided, among other things, a common solution to remove obstacles to the use of electronic communications in a manner acceptable to States with different legal, social and economic systems. The Commission was also making progress in other Working Groups, one example being the important work done in Working Group III (Transport Law), which was striking the right balance in formulating the new instrument on issues relating to the international carriage of goods by sea. The Nordic countries attached great importance to the work of UNCITRAL and would continue contributing to the further development of international trade law in order to promote economic development.

61. **Mr. Ascencio** (Mexico) welcomed the approval of the convention on the use of electronic communications in international contracts, which met the need to establish a mandatory international regime governing the use of electronic media in cross-border trade and would provide greater transparency and legal certainty in that area. He commended the work of Working Group II (Arbitration and Conciliation), and, with regard to the form of arbitration agreements, suggested that the requirement that they be in written form should be eliminated, thus bringing arbitration practice into line with commercial contract practice. He hoped that the necessary consensus in that regard would be achieved soon, so that the requisite changes to article 17, paragraph 7, of the Model Law on International Commercial Arbitration could be made in the first half of 2006.

62. His delegation noted the progress made in the preparation of the legislative guide on security interests, which would contribute to the development of a broad and modern legal regime that would ensure efficient regulation in that regard. It therefore supported the studies and consultations necessary to achieve a consensus on the substantive aspects of the guide.

63. With regard to revision of the Model Law on Procurement of Goods, Construction and Services, studies and consultations were likewise necessary in order to arrive at a comprehensive approach covering all aspects of the topic, thus promoting modernization and competitiveness in the field of government procurement.

64. **Ms. Wilcox** (United States of America) observed that the Commission had maintained its technical and non-politicized approach to commercial and economic law reform and had focused on the promotion of trade in all geographic regions and for States at all levels of development. The Commission and its Working Groups had recognized that, despite liberalization of trade through agreements, many cross-border transactions either did not take place or took place under unfavourable terms because of the failure to upgrade commercial laws. The Commission's work could help to close that gap for many countries.

65. The United States Congress had recently incorporated the UNCITRAL Model Law on Cross-Border Insolvency in its legislation and encouraged other States to adopt the Model Law in recognition of the Commission's effective technical work on economic and commercial law.

66. The recent completion of the draft convention on the use of electronic communications in international contracts and the publication of the new UNCITRAL Legislative Guide on Insolvency Law were significant achievements. The draft convention would facilitate world commerce by promoting a baseline of international rules validating the use of electronic messaging in contractual matters. That would expand the scope of modern electronic commerce law, especially in developing countries, thus enabling them to reduce existing gaps in their access to new electronic commerce and Internet markets. It would also enable States to upgrade existing treaties.

67. Her delegation welcomed the continuing efforts of Working Group I (Procurement), Working Group II (Arbitration and Conciliation), Working Group III (Transport Law), and Working Group VI (Security Interests). It supported the process that had brought the goal of concluding a draft instrument on the carriage of goods within reach and noted that while a number of sources had made recommendations, Working Group III and the Commission remained the final arbiters of all proposals. Her delegation also welcomed the progress made in developing principles on secured financing. The test for any provision of the legislative guide on security interests should be whether it promoted greater availability and lowered the cost of secured finance, especially for developing countries. If economic performance standards were adhered to, implementation of the Commission's legislative

recommendations could help many countries to promote growth.

68. Lastly, her delegation supported the secretariat's work aimed at developing information through international colloquiums and expert meetings, including plans to explore ways to combat commercial fraud, which threatened the stability of markets. It commended the secretariat for holding meetings on the issue, as appropriate, with the United Nations Office on Drugs and Crime.

69. **Mr. Pinzón Sánchez** (Chairman of the United Nations Commission on International Trade Law (UNCITRAL)), responding to the comments made by delegations, said that one key aspect of the work of UNCITRAL was its internal consistency and its self-generating dynamic. Thus, for example, the recently completed draft convention on the use of electronic communications in international contracts had followed naturally from the conclusion of the UNCITRAL Model Law on Electronic Signatures in 2001. The same was true of other projects currently under consideration by the Commission, such as the work on updating the UNCITRAL Model Law on Procurement of Goods, Construction and Services and the UNCITRAL Model Law on International Commercial Arbitration. As for future work, he drew attention to the Commission's consideration of possible developments in the area of insolvency law. Following the adoption of the UNCITRAL Legislative Guide on Insolvency Law in 2004, an element of continuity had been shown with the proposal to concentrate on cross-border insolvency protocols in insolvency cases. Work would also continue on international contracts and international cooperation.

70. He commended the efforts of the secretariat, which had contributed greatly to the Commission's work and could do more if it were provided with increased financial resources. With regard to specific points that had been raised, he fully endorsed the view that developing countries should be more involved in the Commission's work. He was also confident that the issue of the use of all six official languages, to which the Commission attached great importance, would shortly be resolved.

Agenda item 155: Observer status for the Latin American Integration Association in the General Assembly (A/60/141 and A/C.6/60/L.3)

71. **Mr. Ortega** (Ecuador), speaking on behalf of the member States of the Latin American Integration Association (ALADI) (Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and the Bolivarian Republic of Venezuela) said that ALADI was an international organization of an intergovernmental character whose objective was to promote the social and economic development of the 12 member States, with a view to the creation of a Latin American common market. Its constitutive treaty, adopted in 1980, established the general principles on which it was based: economic and political pluralism; progressive convergence of activities aimed at creating a Latin American common market; establishment of differential treatment based on the development level of member States; and variety in methods of agreement on commercial instruments.

72. Regional agreements within the framework of ALADI had covered such diverse issues as tax relief and trade promotion; economic complementarity; agricultural trade; financial, tax, customs and health cooperation; preservation of the environment; technological and scientific cooperation; and promotion of tourism. The Association's juridical structure included a wide range of subregional, multilateral and bilateral agreements on integration. It was therefore ALADI which must develop activities to promote regional integration efforts that would naturally tend to the creation of a common economic space. Interaction between ALADI and the United Nations would enhance regional cooperation. He therefore urged the Committee to recommend that ALADI should be granted observer status in the General Assembly.

73. **Mr. Malpede** (Argentina), speaking on behalf of the Rio Group, said that the framework provided by ALADI was of great importance to Latin America. The granting of observer status in the General Assembly would enable the member States of ALADI, which was the largest integration group within Latin America, to interact more fully with other countries, to their mutual benefit.

74. **Ms. Rivero** (Uruguay) said that her delegation wished to emphasize the importance that ALADI

attached to obtaining observer status in the General Assembly. More effective cooperation between ALADI and the United Nations would be of great assistance in promoting economic and social development in the region, a goal for which both organizations strove.

Agenda item 156: Observer status for the Common Fund for Commodities in the General Assembly (A/60/191 and A/C.6/60/L.2)

75. **Ms. Taj** (United Republic of Tanzania) urged the Committee to support the granting of observer status for the Common Fund for Commodities in the General Assembly. The overriding objective of the Fund, which was described in detail in document A/60/191, was the alleviation of poverty. Established by the United Nations Conference on Trade and Development (UNCTAD), it was charged with supporting commodity-dependent developing countries in their social and economic development through the financing of commodity-focused projects. The Fund was applying for observer status because of the compatibility of its work with that of the United Nations: both sought to enhance the development of commodity producers and their societies. The granting of observer status would enable the two organizations to share information on the implementation of various United Nations and Fund programmes, thus achieving coherence in international efforts to alleviate poverty. Lastly, she informed the Committee that the delegations of Ethiopia, Ghana, Madagascar, Sierra Leone, Spain, Uganda and the United Kingdom had become sponsors of draft resolution A/C.6/60/L.2.

76. **Mr. Muchemi** (Kenya) said that the Fund was an autonomous intergovernmental organization established within the framework of the United Nations. It provided its members with support on commodity-development measures aimed at improving structural conditions in markets and enhancing their long-term competitiveness. Many countries, including his own, whose economies depended largely on commodities had benefited, and continued to benefit, from the Fund's activities. If invited to participate in General Assembly sessions in the capacity of observer, the Fund could share experiences and good practices in its area of specialization. His delegation therefore hoped that the Committee would recommend the adoption of draft resolution A/C.6/60/L.2.

The meeting rose at 12.25 p.m.